# In the Supreme Court of the United States

OCTOBER TERM, 1975

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No. 75-1421

GULF STATES UTILITIES COMPANY, PETITIONER

*v.*

FEDERAL POWER COMMISSION, ET AL.

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

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**MEMORANDUM FOR THE FEDERAL POWER COMMISSION**

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This case arises from petitioner's application to the Federal Power Commission under Section 205 of the Federal Power Act, 16 U.S.C. 824d, for rate increases for sales to the Sam Rayburn Dam Electric Cooperative and the Mid-South Electric Cooperative. As required by this Court's decisions,[1] the Commission examined each of petitioner's contracts as filed with the Commission to determine whether petitioner had reserved for itself the right unilaterally to file for rate increases. The Commission concluded that petitioner's contract with Sam Rayburn authorized unilateral filings for rate increases

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[1] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332; *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348; *United Gas Pipe Line Co.*, v. *Memphis Light, Gas and Water Division*, 358 U.S. 103.

with respect to all its sales to Sam Rayburn. The Commission also concluded that petitioner's contract with Mid-South authorized unilateral filings for rate increases, but only with respect to sales in excess of the contract's stated minimum. The Commission accordingly accepted petitioner's proposed rate schedules for filing subject to certain conditions (Pet. App. D).

On petitions for review, the court of appeals set aside the Commission's order and remanded to the Commission with instructions to reject the filing insofar as it applied to Sam Rayburn and to determine whether the written contract with Mid-South, as filed with the Commission, had been modified by the parties' conduct (Pet. App. A).

The petition points to three alleged errors in the court of appeals decision. First, petitioner argues that the court improperly usurped the Commission's function of interpreting filed contracts. Second, petitioner contends that the court improperly excused Mid-South's failure to seek rehearing of the Commission's order within the statutory period. Third, petitioner argues that the court erred in concluding that the Commission's authority to accept petitioner's filing with respect to Mid-South could be governed by an unfiled, unwritten contract modification, when Section 205(d) of the Act requires utilities to notify the Commission of changes in their rates or services and the Commission's Rules of Practice and Procedure require companies to file their contracts and any modifications with the Commission and to render service accordingly (18 C.F.R. Part 35).

Although petitioner's first and second arguments may have merit, they are tied to the particular facts of this case and do not, in our view, present issues of general importance.

The third issue, however, implicates the Commission's established practice of relying upon filed contracts in regulating public utilities subject to its jurisdiction. To the extent that the court of appeals' decision affects the Commission's ability to rely upon filed contracts in determining whether to accept or reject a proposed rate increase, it may create serious practical problems for the Commission. It is uncertain at the present time, however, how many unfiled contract modifications there may be and how often the issue will arise in Commission proceedings.

Thus, while the Commission believes that the court of appeals erred in requiring the Commission to consider Mid-South's allegations of unfiled contract modifications, the Commission did not file a petition for a writ of certiorari in this case. In view of the potential impact of the court's error, however, the Commission does not oppose the granting of the present petition limited to question III.

Respectfully submitted.

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